

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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DESHAWN ELLISON,

Plaintiff,

v.

Case No. 23-cv-1447-pp

DYLAN MACIEJEWSKI,

Defendant.

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**ORDER DENYING PLAINTIFF'S MOTION TO USE RELEASE ACCOUNT FOR  
FILING FEE (DKT. NO. 2) AND DENYING PLAINTIFF'S MOTION TO ORDER  
DOC TO SEND FILING FEE FROM RELEASE ACCOUNT (DKT. NO. 4)**

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Plaintiff Deshawn Ellison, who is incarcerated at the Green Bay Correctional Institution and representing himself, filed this civil rights case under 42 U.S.C. §1983. Dkt. No. 1. The plaintiff has filed a motion to use his release account for the filing fee (Dkt. No. 2) and a motion for the court to order the “DOC” to send the filing fee from his release account (Dkt. No. 4).

The Prison Litigation Reform Act (PLRA) applies to this case because the plaintiff was incarcerated when he filed his complaint. That law requires the court to collect filing fees from a “prisoner’s account.” 28 U.S.C. §1915(b). The term “prisoner’s account” encompasses both a prisoner’s release account and his general account. Spence v. McCaughtry, 46 F. Supp. 2d 861, 862 (E.D. Wis. 1999). “Release account’ means an account established for an inmate in which a percentage of the inmate’s income is deposited, in accordance with s. DOC 309.466 so that the inmate has sufficient funds when released from the

institution to purchase release clothing, out-of-state transportation, and other items and services needed on release.” Wis. Admin. Code §DOC 309.02(18).

Given the purpose of the release account, federal courts do not focus on that account as the source of funds to satisfy filing fee payment requirements.

Smith v. Huibregtse, 151 F. Supp. 2d 1040, 1042 (E.D. Wis. 2001).

District courts generally do not allow plaintiffs to deplete the funds in their release account by paying the full filing fee from that account. Typically, incarcerated plaintiffs file a motion to proceed without prepaying of the filing fee instead of paying the full \$402 fee up front. The court then assesses an initial partial filing fee. If a plaintiff does not have enough money in his general account to pay the initial partial filing fee, district courts allow for payment of the initial partial filing fee out of the release account, then the plaintiff pays the balance remaining over time from his general account.

The plaintiff does not explain why he wants to use his release account rather than filing a motion to proceed without prepaying the filing fee, so the court will deny his request. The plaintiff should file a motion for leave to proceed without prepaying the filing fee, along with a certified copy of his trust account statement covering the six months preceding the filing of his complaint. The court will then assess an initial partial filing fee, which the plaintiff may pay out of his release account if he doesn’t have enough money in his general account to pay it. If the plaintiff wishes to proceed with his case, he must either pay the \$402 filing fee or, if doesn’t have enough money in his general account to pay that fee, file a motion to proceed without prepaying the

filing fee and his six-month trust account statement. Failure to pay the filing fee or a motion for leave to proceed without prepaying the filing fee by the deadline the court will set below may result in the court dismissing the case without prejudice.

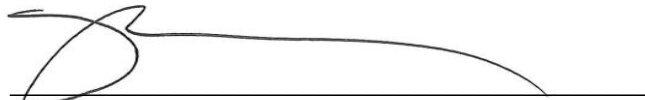
The court **DENIES** the plaintiff's motion to use release account for filing fee. Dkt. No. 2.

The court **DENIES** the plaintiff's motion to order DOC to send filing fee from release account. Dkt. No. 4.

The court **ORDERS** that by the end of the day on **December 8, 2023**, the plaintiff must either file a motion to proceed without prepaying the filing fee (along with his six-month trust account statement) or pay the full \$402 filing fee. The plaintiff must file the motion or pay the fee in time for the court to *receive it* by the end of the day on December 8, 2023. If the court does not receive either a motion for leave to proceed without prepaying the filing fee or the full \$402 by the end of the day on December 8, 2023, the court may dismiss this case without prejudice and the plaintiff will still owe the filing fee.

Dated in Milwaukee, Wisconsin this 17th day of November, 2023.

**BY THE COURT:**

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

**HON. PAMELA PEPPER**  
**Chief United States District Judge**